

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Kyle Fellers, Anthony Foote,
Nicole Foote, and Eldon Rash,

Plaintiffs,

v.

Marcy Kelley, Michael Desilets, Matt Fisk,
Bow School District, Philip Lamy & Steve
Rossetti,

Defendants.

Case No. 1:24-cv-311-SM-AJ

**DEFENDANT BOW SCHOOL DISTRICT'S RESPONSE TO PLAINTIFFS'
EXPEDITED MOTION FOR SCHEDULING ORDER
RE HEARING RELATED DEADLINES**

NOW COMES Defendant Bow School District ("the District"), through its attorneys Cullen Collimore Shirley PLLC, and hereby responds to Plaintiffs' Expedited Motion for Scheduling Order Re Hearing Related Deadlines [Doc. 26].

1. The decision of Plaintiffs' lead counsel to file his expedited motion was premature. The parties' email communications about planning for the November hearing were not solely about briefing deadlines and page lengths. They concerned weightier issues too, like whether expert testimony is needed at the hearing and the order of presentation of evidence.

2. Rather than pick up the phone to confer when the parties met an impasse by email, as the District's counsel had invited, Plaintiffs' lead counsel filed his expedited motion. Oddly, though, the motion was addressed to only a fraction of the issues that were under discussion, all of which still require resolution.

3. Plaintiffs then waited until Defendants answered the lengthy original Complaint to file an Amended Complaint that expands the factual allegations and adds more legal claims to the case. The District is still assessing the Amended Complaint and how it impacts the evidence needed for the November hearing.

4. Notably, Plaintiffs have not abandoned their damages claim nor have they released the referee, Rosetti, from the case. These features of the Amended Complaint may require a jury trial before a final hearing on the permanent injunction request is held. They may also require the District to seek a continuance of the November hearing.

5. In any event, as it concerns the scheduling issues raised by Plaintiffs in their expedited motion, and assuming a November hearing on all issues holds, the District responds as follows.

6. **Parties exchange exhibit lists, witness lists, including expert disclosure, and exhibits not previously disclosed:** The District requests this deadline be set for **November 14, 2024**, because it is still gathering information and documents that may be material to the hearing. This effort may also be impacted by the expanded scope of the Amended Complaint. This deadline is the minimum necessary to obtain expert testimony given Plaintiffs' objection to the Court taking judicial notice on issues such as harm to LGBTQ+ students and/or staff. The date is a week before the hearing and will allow adequate time to raise concerns, if any, with the Court.

7. **Length of Final Pre-hearing Briefs:** The District agrees to **November 18, 2024**, as the deadline for filing prehearing briefs. The District believes the page limit for the briefs should be 15 pages due to the Amended Complaint and the additional claims and facts now alleged.

8. **Post-hearing briefs:** The District proposes **December 13, 2024**, for the filing of post hearing briefs. The District agrees with the page length proposed by Plaintiffs.

9. **Post-hearing reply briefs:** The District proposes **December 18, 2024**, for post-hearing reply briefs. The District agrees with the page length proposed by Plaintiffs.

10. As for the remaining unresolved issues concerning the November hearing, the District anticipates it will be filing motions *in limine* to have the Court resolve them. The District reserves the right to seek a continuance.

Respectfully submitted,

BOW SCHOOL DISTRICT

By its attorneys,

CULLEN COLLIMORE SHIRLEY PLLC

Dated: October 25, 2024

/s/ Brian J.S. Cullen

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CERTIFICATE OF SERVICE

I certify that a copy of this filing was served via the Court's ECF filing system upon counsel of record.

Dated: October 25, 2024

/s/ Brian J.S. Cullen

Brian J.S. Cullen